

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 159

BY SENATORS SYPOLT, CLINE, AND SMITH

[Introduced January 9, 2020; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §7-11B-14 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §8-12-5 of said code, all relating to allowing municipalities to contract,
 3 without bidding, projects up to \$50,000.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

**§7-11B-14. Projects financed by tax increment financing considered to be public
improvements subject to prevailing wage, local labor preference and competitive
bid requirements.**

1 (a) Any project acquired, constructed, or financed, in whole or in part, by a county
 2 commission or municipality under this article shall be considered to be a “public improvement”
 3 within the meaning of the provisions of articles one-c, chapter twenty-one of this code.

4 (b) The county commission or municipality shall, except as provided in subsection (c) of
 5 this section, solicit or require solicitation of competitive bids and require compliance with article
 6 one-c, chapter twenty-one of this code for every project or infrastructure project funded pursuant
 7 to this article exceeding ~~\$25,000~~ \$50,000 in total cost: *Provided*, That the provisions of article
 8 two-d, chapter seventeen of this code may apply where applicable to projects subject to an
 9 intergovernmental agreement with the Commissioner of Highways.

10 (c) Following the solicitation of the bids, the construction contract shall be awarded to the
 11 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond:
 12 *Provided*, That the county commission, municipality or other person soliciting the bids may reject
 13 all bids and solicit new bids on the project.

14 (d) No officer or employee of this state or of any public agency, public authority, public
 15 corporation, or other public entity, and no person acting or purporting to act on behalf of such
 16 officer or employee or public entity shall require that any performance bond, payment bond, or
 17 bid bond required or permitted by this section be obtained from any particular surety company,

18 agent, broker or producer.

19 (e) This section does not:

20 (1) Apply to work performed on construction projects not exceeding a total cost of \$50,000
21 by regular full-time employees of the county commission or the municipality: *Provided*, That no
22 more than \$50,000 shall be expended on an individual project in a single location in a 12 month
23 period;

24 (2) Prevent students enrolled in vocational educational schools from being used in
25 construction or repair projects when such use is a part of the students' training program;

26 (3) Apply to emergency repairs to building components and systems: *Provided*, That the
27 term "emergency repairs" means repairs that, if not made immediately, will seriously impair the
28 use of the building components and systems or cause danger to those persons using the building
29 components and systems; or

30 (4) Apply to any situation where the county commission or municipality comes to an
31 agreement with volunteers, or a volunteer group, by which the governmental body will provide
32 construction or repair materials, architectural, engineering, technical or any other professional
33 services and the volunteers will provide the necessary labor without charge to, or liability upon,
34 the governmental body: *Provided*, That the total cost of the construction or repair projects does
35 not exceed \$50,000.

36 (f) The provisions of subsections (a) and (b) of this section apply to any specific project,
37 whether privately or publicly owned or constructed on private or public lands, that are financed or
38 to be financed, in whole or in part, with tax increment or proceeds of tax increment financing
39 obligations: *Provided*, That the provisions of subsections (a) and (b) of this section do not apply
40 to any project or part of a project that is privately owned and financed without any tax increment
41 or proceeds of tax increment financing obligations.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED

**RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL
OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

§8-12-5. General powers of every municipality and the governing body thereof.

1 In addition to the powers and authority granted by: (i) The Constitution of this state; (ii)
2 other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not
3 inconsistent or in conflict with any of the foregoing except special legislative charters, every
4 municipality and the governing body thereof shall have plenary power and authority therein by
5 ordinance or resolution, as the case may require, and by appropriate action based thereon:

6 (1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in
7 good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks,
8 drains and gutters, for the use of the public, and to improve and light the same, and have them
9 kept free from obstructions on or over them which have not been authorized pursuant to the
10 succeeding provisions of this subdivision; and, subject to such terms and conditions as the
11 governing body shall prescribe, to permit, without in any way limiting the power and authority
12 granted by the provisions of article sixteen of this chapter, any person to construct and maintain
13 a passageway, building or other structure overhanging or crossing the airspace above a public
14 street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person
15 to construct and maintain a passageway, building or other structure overhanging or crossing any
16 airspace is granted, a public hearing thereon shall be held by the governing body after publication
17 of a notice of the date, time, place and purpose of the public hearing has been published as a
18 Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of
19 this code and the publication area for the publication shall be the municipality: *Provided*, That any
20 permit so granted shall automatically cease and terminate in the event of abandonment and
21 nonuse thereof for the purposes intended for a period of 90 days, and all rights therein or thereto
22 shall revert to the municipality for its use and benefit;

23 (2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways,
24 sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions
25 under which any such opening may be made;

26 (3) To prevent by proper penalties the throwing, depositing or permitting to remain on any
27 street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron,
28 nails, tacks, wire, other litter or any offensive matter or anything likely to injure the feet of
29 individuals or animals or the tires of vehicles;

30 (4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks
31 and public places belonging to the municipality, including the naming or renaming thereof, and to
32 consult with local postal authorities, the Division of Highways and the directors of county
33 emergency communications centers to assure uniform, nonduplicative addressing on a
34 permanent basis;

35 (5) To regulate the width of streets, avenues and roads, and, subject to the provisions of
36 article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved,
37 repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants
38 thereof or of the real property next adjacent thereto;

39 (6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels
40 and ferries and approaches thereto;

41 (7) To provide for the construction and maintenance of water drains, the drainage of
42 swamps or marshlands and drainage systems;

43 (8) To provide for the construction, maintenance and covering over of watercourses;

44 (9) To control and administer the waterfront and waterways of the municipality and to
45 acquire, establish, construct, operate and maintain and regulate flood control works, wharves and
46 public landings, warehouses and all adjuncts and facilities for navigation and commerce and the
47 utilization of the waterfront and waterways and adjacent property;

48 (10) To prohibit the accumulation and require the disposal of garbage, refuse, debris,

49 wastes, ashes, trash and other similar accumulations whether on private or public property:
50 *Provided, That*, in the event the municipality annexes an area which has been receiving solid
51 waste collection services from a certificated solid waste motor carrier, the municipality and the
52 solid waste motor carrier may negotiate an agreement for continuation of the private solid waste
53 motor carrier services for a period of time, not to exceed three years, during which time the
54 certificated solid waste motor carrier may continue to provide exclusive solid waste collection
55 services in the annexed territory;

56 (11) To construct, establish, acquire, equip, maintain and operate incinerator plants and
57 equipment and all other facilities for the efficient removal and destruction of garbage, refuse,
58 wastes, ashes, trash and other similar matters;

59 (12) To regulate or prohibit the purchase or sale of articles intended for human use or
60 consumption which are unfit for use or consumption, or which may be contaminated or otherwise
61 unsanitary;

62 (13) To prevent injury or annoyance to the public or individuals from anything dangerous,
63 offensive or unwholesome;

64 (14) To regulate the keeping of gunpowder and other combustibles;

65 (15) To make regulations guarding against danger or damage by fire;

66 (16) To arrest, convict and punish any individual for carrying about his or her person any
67 revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or
68 any other dangerous or other deadly weapon of like kind or character: *Provided, That* with respect
69 to any firearm a municipality may only arrest, convict and punish someone if they are in violation
70 of an ordinance authorized by subsection five-a of this article, a state law proscribing certain
71 conduct with a firearm or applicable federal law;

72 (17) To arrest, convict and punish any person for importing, printing, publishing, selling or
73 distributing any pornographic publications;

74 (18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting

75 to another person any house or other building for the purpose of being used or kept as a house
76 of ill fame, or for knowingly permitting any house owned by him or her or under his or her control
77 to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame,
78 or frequenting same;

79 (19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd,
80 obscene and indecent;

81 (20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

82 (21) To arrest, convict and punish any individual for driving or operating a motor vehicle
83 while intoxicated or under the influence of liquor, drugs or narcotics;

84 (22) To arrest, convict and punish any person for gambling or keeping any gaming tables,
85 commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under
86 any denomination, whether the gaming table be played with cards, dice or otherwise, or any
87 person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank,
88 or keeping or maintaining any gaming house or place, or betting or gambling for money or
89 anything of value;

90 (23) To provide for the elimination of hazards to public health and safety and to abate or
91 cause to be abated anything which in the opinion of a majority of the governing body is a public
92 nuisance;

93 (24) To license, or for good cause to refuse to license in a particular case, or in its
94 discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for
95 hire of pool and billiard tables notwithstanding the general law as to state licenses for any such
96 business and the provisions of section four, article thirteen of this chapter; and when the
97 municipality, in the exercise of its discretion, refuses to grant a license to operate a pool or billiard
98 room, mandamus may not lie to compel the municipality to grant the license unless it shall clearly
99 appear that the refusal of the municipality to grant a license is discriminatory or arbitrary; and in
100 the event that the municipality determines to license any business, the municipality has plenary

101 power and authority and it shall be the duty of its governing body to make and enforce reasonable
102 ordinances regulating the licensing and operation of the businesses;

103 (25) To protect places of divine worship and to preserve peace and order in and about the
104 premises where held;

105 (26) To regulate or prohibit the keeping of animals or fowls and to provide for the
106 impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

107 (27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly
108 beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of
109 necessary sustenance any domestic animal;

110 (28) To provide for the regular building of houses or other structures, for the making of
111 division fences by the owners of adjacent premises and for the drainage of lots by proper drains
112 and ditches;

113 (29) To provide for the protection and conservation of shade or ornamental trees, whether
114 on public or private property, and for the removal of trees or limbs of trees in a dangerous
115 condition;

116 (30) To prohibit with or without zoning the location of occupied house trailers or mobile
117 homes in certain residential areas;

118 (31) To regulate the location and placing of signs, billboards, posters and similar
119 advertising;

120 (32) To erect, establish, construct, acquire, improve, maintain and operate a gas system,
121 a waterworks system, an electric system or sewer system and sewage treatment and disposal
122 system, or any combination of the foregoing (subject to all of the pertinent provisions of articles
123 nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right
124 of eminent domain set forth in articles nineteen and twenty), within or without the corporate limits
125 of the municipality, except that the municipality may not erect any system partly without the
126 corporate limits of the municipality to serve persons already obtaining service from an existing

127 system of the character proposed and where the system is by the municipality erected, or has
128 heretofore been so erected, partly within and partly without the corporate limits of the municipality,
129 the municipality has the right to lay and collect charges for service rendered to those served within
130 and those served without the corporate limits of the municipality and to prevent injury to the
131 system or the pollution of the water thereof and its maintenance in a healthful condition for public
132 use within the corporate limits of the municipality;

133 (33) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any
134 and all other property and appurtenances necessary, appropriate, useful, convenient or incidental
135 to any system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all
136 of the pertinent provisions of articles nineteen and twenty of this chapter;

137 (34) To establish, construct, acquire, maintain and operate and regulate markets and
138 prescribe the time of holding the same;

139 (35) To regulate and provide for the weighing of articles sold or for sale;

140 (36) To establish, construct, acquire, maintain and operate public buildings, municipal
141 buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor
142 vehicle parking lots or any other public works;

143 (37) To establish, construct, acquire, provide, equip, maintain and operate recreational
144 parks, playgrounds and other recreational facilities for public use and in this connection also to
145 proceed in accordance with the provisions of article two, chapter ten of this code;

146 (38) To establish, construct, acquire, maintain and operate a public library or museum or
147 both for public use;

148 (39) To provide for the appointment and financial support of a library board in accordance
149 with the provisions of article one, chapter ten of this code;

150 (40) To establish and maintain a public health unit in accordance with the provisions of
151 §16-2-2 of this code, which unit shall exercise its powers and perform its duties subject to the
152 supervision and control of the West Virginia Board of Health and State Bureau for Public Health;

153 (41) To establish, construct, acquire, maintain and operate hospitals, sanitarians and
154 dispensaries;

155 (42) To acquire, by purchase, condemnation or otherwise, land within or near the
156 corporate limits of the municipality for providing and maintaining proper places for the burial of
157 the dead and to maintain and operate the same and regulate interments therein upon terms and
158 conditions as to price and otherwise as may be determined by the governing body and, in order
159 to carry into effect the authority, the governing body may acquire any cemetery or cemeteries
160 already established;

161 (43) To exercise general police jurisdiction over any territory without the corporate limits
162 owned by the municipality or over which it has a right-of-way;

163 (44) To protect and promote the public morals, safety, health, welfare and good order;

164 (45) To adopt rules for the transaction of business and the government and regulation of
165 its governing body;

166 (46) Except as otherwise provided, to require and take bonds from any officers, when
167 considered necessary, payable to the municipality, in its corporate name, with such sureties and
168 in a penalty as the governing body may see fit, conditioned upon the faithful discharge of their
169 duties;

170 (47) To require and take from the employees and contractors such bonds in a penalty,
171 with such sureties and with such conditions, as the governing body may see fit;

172 (48) To investigate and inquire into all matters of concern to the municipality or its
173 inhabitants;

174 (49) To establish, construct, require, maintain and operate such instrumentalities, other
175 than free public schools, for the instruction, enlightenment, improvement, entertainment,
176 recreation and welfare of the municipality's inhabitants as the governing body may consider
177 necessary or appropriate for the public interest;

178 (50) To create, maintain and operate a system for the enumeration, identification and

179 registration, or either, of the inhabitants of the municipality and visitors thereto, or the classes
180 thereof as may be considered advisable;

181 (51) To require owners, residents or occupants of factory-built homes situated in a factory-
182 built rental home community with at least ten factory-built homes, to visibly post the specific
183 numeric portion of the address of each factory-built home on the immediate premises of the
184 factory-built home of sufficient size to be visible from the adjoining street: *Provided*, That in the
185 event no numeric or other specific designation of an address exists for a factory-built home subject
186 to the authorization granted by this subdivision, the municipality has the authority to provide a
187 numeric or other specific designation of an address for the factory-built home and require that it
188 be posted in accordance with the authority otherwise granted by this section.

189 (52) To appropriate and expend not exceeding 25 cents per capita per annum for
190 advertising the municipality and the entertainment of visitors;

191 (53) To conduct programs to improve community relations and public relations generally
192 and to expend municipal revenue for such purposes;

193 (54) To reimburse applicants for employment by the municipality for travel and other
194 reasonable and necessary expenses actually incurred by the applicants in traveling to and from
195 the municipality to be interviewed;

196 (55) To provide revenue for the municipality and appropriate the same to its expenses;

197 (56) To create and maintain an employee benefits fund which may not exceed one tenth
198 of one percent of the annual payroll budget for general employee benefits and which is set up for
199 the purpose of stimulating and encouraging employees to develop and implement cost-saving
200 ideas and programs and to expend moneys from the fund for these purposes;

201 (57) To enter into reciprocal agreements with governmental subdivisions or agencies of
202 any state sharing a common border for the protection of people and property from fire and for
203 emergency medical services and for the reciprocal use of equipment and personnel for these
204 purposes;

205 (58) To provide penalties for the offenses and violations of law mentioned in this section,
206 subject to the provisions of section one, article 11 of this chapter, and such penalties may not
207 exceed any penalties provided in this chapter and chapter 61 of this code for like offenses and
208 violations; ~~and~~

209 (59) To participate in a purchasing card program for local governments authorized and
210 administered by the State Auditor as an alternative payment method; and

211 (60) To let contracts without competitive bidding when the value of the contract is \$50,000
212 or less.

NOTE: The purpose of this bill is to allow municipalities to let contracts for projects without competitive bidding when the value is \$50,000 or less.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.